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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCUMENT CONTROLJEFF HATCH-MILLER
ChairmanWILLIAM MUNDELL
CommissionerMARC SPITZER
CommissionerMIKE GLEASON
CommissionerKRISTIN K. MAYES
Commissioner

IN THE MATTER OF THE FORMAL
COMPLAINT AND REQUEST FOR
DECLARATORY JUDGMENT OF PAC-
WEST TELECOMM, INC. AGAINST
QWEST CORPORATION

DOCKET NO. T-03693A-05-0875
T-01051B-05-0875

**QWEST CORPORATION'S MOTION
TO COMPEL RESPONSE TO DATA
REQUESTS
[Expedited Hearing Requested]**

Pursuant to Rule 37(a) of the Arizona Rules of Civil Procedure, and Arizona Administrative Code R14-3-106(k), Qwest Corporation ("Qwest") moves the Arizona Corporation Commission ("Commission") for an order compelling Pac-West Telecomm, Inc. ("Pac-West") to produce certain documents on an expedited basis for the reasons described herein.

MEMORANDUM OF POINTS AND AUTHORITIES**I. Factual Background**

On March 22, 2006, Qwest served Pac-West with its first set of data requests which were specifically tailored to obtain information concerning the type of traffic Pac-West customers originate and terminate over Qwest's network. See Exhibit A. Pac-West provided responses to Qwest Data Request Nos. 1.1 through 1.28 on April 3, 2006, attached hereto as Exhibit B. In a gesture of good faith, Qwest consented to Pac-West's request to submit any objections simultaneous with its response, rather than on March 29, 2006. Unfortunately, Pac-West did not utilize the extra time to provide any meaningful response to Qwest's first set of data requests, and instead crafted numerous objections

1 designed to frustrate discovery in this proceeding. After receiving Pac-West's numerous
2 objections, Qwest counsel attempted to resolve the impasse on April 4, 2006. *See* Exhibit
3 C. Pac-West has been unresponsive to Qwest's attempt to resolve the current discovery
4 dispute, and because discovery is set to expire by procedural order on April 14, 2006,
5 granting this Motion to Compel ("Motion") is warranted.

6 **II. Brief Overview of Discovery Process**

7 Rule 26 provides that parties may obtain discovery "regarding any matter, not
8 privileged, which is relevant to the subject matter involved." Ariz. R. Civ. P. 26(b)(1).
9 Relevancy of evidence is found if it has "any tendency to make the existence of any fact
10 that is of consequence to the determination of the action more probable or less probable
11 than it would be without the evidence." Ariz. R. Evid. 401. Evidence need not be
12 admissible in order to be discovered – it need only be "reasonably calculated to lead to
13 the discovery of admissible evidence." Ariz. R. Civ. P. 26(b)(1). Rule 37 states that
14 where a party fails to respond to an interrogatory or request for production, the party
15 serving such discovery may move for an order compelling the non-responsive party to
16 answer. Ariz. R. Civ. P. 37(a).

17 The Arizona Rules of Civil Procedure advocate a policy of full disclosure between
18 parties. The purpose of discovery is to "provide a vehicle by which one party may be
19 fairly apprised of the other's case and be prepared to meet it if he can." *Kott v. City of*
20 *Phoenix*, 158 Ariz. 415, 418, 763 P.2d 235, 238 (1988), *citing Watts v. Superior Court*,
21 *87 Ariz. 1, 347 P.2d 565 (1959)*. Discovery promotes the efficient and speedy disposition
22 of an action, minimizes surprise, and prevents a hearing or trial from becoming a
23 guessing game. *See Cornet Stores v. Superior Court*, 108 Ariz. 85, 86, 492 P.2d 1191,
24 1193 (1972).

25 In addition, a claim that information is confidential or competitively sensitive does
26 not provide any basis on which to deny discovery. *Id.* at 88, 492 P.2d at 1195. Instead,

1 in those circumstances, discovery is permitted pursuant to the terms of a properly drafted
2 protective order. As the Arizona Supreme Court has persuasively noted in addressing
3 this issue:

4 Defendants further object to this interrogatory on the ground
5 that it calls for "confidential information." We know of no
6 case holding that this is a proper ground for objection to an
7 otherwise proper interrogatory. Assuming that the
8 information called for by this interrogatory is of a confidential
9 nature which defendants do not want to have included in a
10 public record, they presumably could have applied for a
11 protective order.

12 *Id.*, quoting *Columbia Broadcasting System, Inc. v. Superior Court*, 263 Cal.App.2d 12,
13 69 Cal.Rptr. 348 (1968). In light of Arizona's policy of full disclosure, a party must
14 respond to a data request "unless it appears affirmatively that the evidence sought is
15 patently objectionable and inadmissible." *Id.* at 87, 492 P.2d at 1194 (citations omitted).

16 With these well-established principles in mind, the Commission should order Pac-
17 west to produce the information sought in Qwest Data Request Nos. 1.1 through 1.24.

18 **III. Pac-West Has Failed to Adequately Respond to Qwest's Data Requests.**

19 Pac-West's objections generally fall into five broad categories¹: 1) that the request
20 is vague, ambiguous and overly broad; 2) that the information is not relevant to the
21 subject matter or reasonably calculated to lead to admissible evidence; 3) that Pac-West
22 does not "peer into the content" of its customer's traffic because it is not lawfully
23 authorized to do so; 4) that contract documents "speak for themselves"; and 5) that the
24 information sought is available to Qwest through customer data records, bills and
25 invoices. Qwest is prepared to stipulate with Pac-West that any information sought by
26 Qwest, which is available to Qwest through its own customer data records, be admissible

¹ The following list of broad objections is not intended to be a complete catalog of Pac-West's numerous objections, and Qwest does not concede the validity of any or all of Pac-West objections.

1 as correct. Otherwise, Pac-West's remaining objections are without merit.

2 1. Despite Qwest's offer to discuss any specific data request that Pac-West
3 claims to be vague, ambiguous or overbroad in an attempt to resolve the discovery
4 dispute, Pac-West has failed to respond. Pac-West's refusal at this time to even discuss
5 with Qwest a narrowing of issues, or to better define terms that will facilitate discovery,
6 requires this Motion.

7 2. Pac-West claims that the information Qwest seeks is neither relevant to the
8 subject matter, nor reasonably calculated to lead to admissible evidence. This general
9 objection holds no merit. The type and amount of traffic sent, and the relative volume of
10 traffic exchanged between Qwest and Pac-West, are facts directly at issue or go to prove
11 those facts. Pac-West has failed to state with specificity why the information sought is
12 not relevant.

13 3. Pac-West claims that information concerning the nature of the traffic that
14 its customers originate and terminate would require it to "peer into the content of
15 customer traffic to ascertain what type of traffic is sent or received..." At the outset, Pac-
16 West claims that it is unlawful to peer into the content of its customer's traffic, but cites
17 no legal authority in support of the objection. Furthermore, upon information and belief,
18 Qwest understands that Pac-West provides certain types of services to its customers, and
19 that Pac-West should therefore be able to identify these types of services *and nature* of
20 the usage. Alternatively, Pac-West should admit that it is incapable of determining the
21 type of traffic originated or terminated by a Pac-West customer, and is therefore unable
22 to identify whether the traffic is local, interLATA, intraLATA, ISP bound, VNXX or any
23 other type of traffic.

24 4. Pac-West objects to certain data requests on the theory that the applicable
25 contract documents "speak for themselves." This objection is specious in light of Pac-
26 West's complaint, which raises specific issues of contract interpretation. Pac-West's

1 timely response is important for Qwest in understanding the concerns raised at this time.
2 Alternatively, Pac-West should admit or stipulate to Qwest's interpretation of the contract
3 at issue.

4 **CONCLUSION**

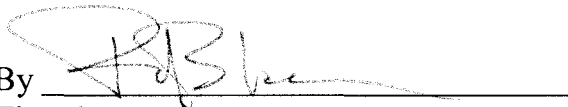
5 Pac-West's original complaint alleges that Qwest has breached the Interconnection
6 Agreement between the parties, Qwest's first set of data requests seeks information that is
7 readily available to Pac-West. Discovery promotes the efficient and speedy disposition
8 of an action, and Pac-West should not be allowed to lengthen this proceeding so that it
9 can continue to avoid paying monies owed to Qwest that are not at dispute herein. Pac-
10 West's continued delay tactics should not be rewarded. For the reasons set forth above,
11 Qwest respectfully requests that the Commission grant this Motion and compel Pac-West
12 to provide answers responsive to Qwest's first set of data requests.

13 SUBMITTED this 11th day of April, 2006.

14
15 Norman Curtright
16 QWEST CORPORATION
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19 (602) 630-2187

20 -and-

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Attorneys for Qwest Corporation

ORIGINAL of the foregoing hand-delivered
for filing this 11 day of April, 2006, to:

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this 11 day of April, 2006 to:

Amy Bjelland, Administrative Law Judge
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1783064.1/67817.401

EXHIBIT

A

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 JEFF HATCH-MILLER

Chairman

3 WILLIAM MUNDELL

Commissioner

4 MARC SPITZER

Commissioner

5 MIKE GLEASON

Commissioner

6 KRISTIN K. MAYES

Commissioner

7
8 IN THE MATTER OF THE FORMAL
9 COMPLAINT AND REQUEST FOR
10 DECLARATORY JUDGMENT OF PAC-
WEST TELECOMM, INC. AGAINST
11 QWEST CORPORATION

DOCKET NO. T-03693A-05-0875
T-01051B-05-0875

**QWEST CORPORATION'S FIRST SET
OF DATA REQUESTS TO PAC-WEST
TELCOMM, INC.**

12 Qwest Corporation ("Qwest") hereby submits its First Set of Data Requests to Pac-
13 West Telecomm, Inc. ("Pac-West") in the above-captioned docket. Qwest instructs that full
14 and complete responses be made by Monday, April 3, 2006.

15 **DEFINITIONS**

16 As used herein, the following terms have the meaning as set forth below:

17 1. The term "you," and "your" shall mean Pac-West, as well as any parent,
18 subsidiaries, and affiliates, former and present officers, attorneys, employees, servants,
19 agents and representatives, and any person acting on their behalf for any purpose.

20 2. "List," "describe," "detail," "explain," "specify" or "state" shall mean to set
21 forth fully, in detail, and unambiguously each and every fact of which you, your company
22 or your agents or representatives have knowledge which is relevant to the answer called for
23 by the data request.

24 3. The terms "document," "documents," or "documentation" as used herein
25 shall include, without limitation, any writings and documentary material of any kind
26 whatsoever, both originals and copies (regardless of origin and whether or not including

1 additional writing thereon or attached thereto), and any and all drafts, preliminary versions,
2 alterations, modifications, revisions, changes and written comments of and concerning such
3 material, including, but not limited to: correspondence, letters, memoranda, internal
4 communications, notes, reports, directions, studies, investigations, questionnaires and
5 surveys, inspections, permits, citizen complaints, studies, papers, files, books, manuals,
6 instructions, records, pamphlets, forms, contracts, contract amendments or supplements,
7 contract offers, tenders, acceptances, counteroffers or negotiating agreements, notices,
8 confirmations, telegrams, communications sent or received, print-outs, diary entries,
9 calendars, tables, compilations, tabulations, charts, graphs, maps, recommendations,
10 ledgers, accounts, worksheets, photographs, tape recordings, movie pictures, videotapes,
11 transcripts, logs, work papers, minutes, summaries, notations and records of any sort
12 (printed, recorded or otherwise) of any oral communications whether sent or received or
13 neither, and other written records or recordings, in whatever form, stored or contained in or
14 on whatever medium including computerized or digital memory or magnetic media that:
15 (a) are now or were formerly in your possession, custody or control; or (b) are known or
16 believed to be responsive to these interrogatories, regardless of who has or formerly had
17 custody, possession or control.

18 4. The terms "identify" and "identity" when used with reference to a natural
19 person means to state his or her full name, present or last known address, present or last
20 known telephone number, present or last known place of employment, position or business
21 affiliation, his or her position or business affiliation at the time in question, and a general
22 description of the business in which he or she is engaged.

23 5. The terms "identify" and "identity" when used with respect to any other
24 entity means to state its full name, the address of its principal place of business and the
25 name of its chief executive officers.

26 6. The terms "identify" and "identity" with respect to a document mean to state

1 the name or title of the document, the type of document (e.g., letter, memorandum,
2 telegram, computer input or output, chart, etc.), its date, the person(s) who authored it, the
3 person(s) who signed it, the person(s) to whom it was addressed, the person(s) to whom it
4 was sent, its general subject matter, its present location, and its present custodian. If any
5 such document was but is no longer in your possession or subject to your control, state
6 what disposition was made of it and explain the circumstances surrounding, and the
7 authorization for, such disposition, and state the date or approximate date of such
8 disposition.

9 7. The terms "identify" and "identity" with respect to any non-written
10 communication means to state the identity of the natural person(s) making and receiving
11 the communication, their respective principals or employers at the time of the
12 communication, the date, manner and place of the communication, and the topic or subject
13 matter of the communication.

14 8. The term to "state the basis" for an allegation, contention, conclusion,
15 position or answer means: (a) to identify and specify the sources therefore; (b) to identify
16 and specify all facts on which you rely or intend to rely in support of the allegation,
17 contention, conclusion, position or answer; and (c) to set forth and explain the nature and
18 application to the relevant facts of all pertinent legal theories upon which you rely for your
19 knowledge, information and/or belief that there are good grounds to support such
20 allegation, contention, conclusion, position or answer.

21 9. The terms "relates to" or "relating to" mean referring to, concerning,
22 responding to, containing, regarding, discussing, describing, reflecting, analyzing,
23 constituting, disclosing, embodying, defining, stating, explaining, summarizing, or in any
24 way pertaining to.

25 10. The term "including" means "including, but not limited to."

26 11. The terms "CLEC" or "competitor" means any competing local exchange

1 carrier not affiliated with Qwest, regardless of whether the carrier is presently providing
2 local telephone exchange services in the State of Arizona.

3 12. The term "carrier" means any provider of telecommunications services.

4 13. The term "possession, custody or control" includes the joint and several
5 possession, custody, or control not only by one or more employees or representatives of
6 Pac-West, but also by each or any person acting or purporting to act on their behalf or any
7 employees or representatives whether as an agent, independent contractor, attorney,
8 consultant, witness or otherwise.

9 14. "Entity" or "entities" means any corporation, unincorporated association, sole
10 proprietorship, partnership, individual, department, agency or consulting firm.

11 INSTRUCTIONS

12 A. These data requests shall be deemed to be continuing. You are obliged to
13 change, supplement, and correct all answers to data requests to conform to available
14 information, including such information as first becomes available to you after the data
15 requests hereto are filed and made, should additional information become known or should
16 information supplied in the responses prove to be incorrect or incomplete.

17 B. The response to each data request provided should first restate the question
18 asked and also identify the person(s) supplying the information and the name of the witness
19 or witnesses who will be prepared to testify concerning the matters contained in any
20 response or document produced.

21 C. In answering these data requests, furnish all information that is available to
22 you or may be reasonably ascertained by you, including information in the possession of
23 any of your agents or attorneys, or otherwise subject to your knowledge, possession,
24 custody or control.

25 D. If in answering these data requests you encounter any ambiguity in
26 construing the request or a definition or instruction relevant to the inquiry contained within

1 the request, set forth the matter deemed "ambiguous" and set forth the construction chosen
2 or used in responding to the request.

3 E. If you object to any part of a request, answer all parts of such requests to
4 which you do not object, and as to each part to which you do object, separately set forth the
5 specific basis for the objection.

6 F. In the event you assert that the data requested is privileged, you should
7 identify any such data and any supporting documents in your written response, by date, and
8 provide a general description of its content. You should also identify all persons who
9 participated in the preparation of the document and all persons, inside or outside Pac-West,
10 who received a copy, read or examined any such document. In addition, you should
11 describe, with particularity, the grounds upon which privilege is claimed.

12 G. In the event that you assert that the requested data are not relevant or material
13 to any issue in the above-captioned matter, you should indicate in your written response to
14 the specific basis for such assertion.

15 H. In the event you assert that the requested data are public information
16 otherwise available to Qwest, you should identify the following in your written response:
17

- 18 1. The title or description of the data claimed to be public information;
- 19 2. The specific page and line number on which the requested material can
20 be found;
- 21 3. The address of the office(s) and/or location(s) nearest downtown
22 Denver where the document or file containing the requested material is
maintained for public inspection.

23 I. In the event that you assert that the requested data are not available in the
24 form requested, you should disclose the following in your written response thereto:
25
26

1. The form in which the requested data currently exists (identifying documents by title or description);
2. The earliest dates, time period, and location that representatives of Qwest may inspect Pac-West files, records or documents in which the requested data currently exist.

J. If any request calls for a document that has been destroyed, placed beyond your control, or otherwise disposed of, identify with specificity each such document and describe in detail any such destruction, placement or disposition.

DATA REQUESTS

1. Please state whether any voice traffic is carried over the trunks Pac-West has obtained from Qwest. If Pac-West customers originate voice grade traffic, please state the volume of the traffic on a monthly and annual basis and its per cent of all traffic exchanged between Qwest and Pac-West for the years 2000-present. State how much of the traffic is originated by a Pac-West customer and how much of the traffic is terminated to a Pac-West customer.
2. Please state whether any traffic, other than Internet Service Provider (ISP-bound) traffic, is carried on any trunks Pac-West has obtained from Qwest. Of all the ISP-bound traffic carried on any of the trunks Pac-West has obtained from Qwest, please state the volume of the 2001 - present traffic on a monthly and annual basis which is (a) originated by Pac-West customers destined for Qwest customers, and (b) originated by Qwest customers destined for Pac-West customers.
3. Does Pac-West provide any competitive local telephone services in Arizona? How many minutes of use of per month of competitive local telephone services does Pac-West originate and to whom?
4. Does Pac-West have any customers other than ISP's? Where are Pac-West's ISP customers' modems located?
5. What percent/ratio of rate reduction does Pac-West claim in this case and how was that figure arrived? Please describe how Pac-West measures the MOU for calls originated by Pac-West customers?

- 1 6. Please identify the price list or contract provisions under which Pac-West
2 provides voice service or competitive local telephone services in Arizona
3 service.
- 4 7. Please provide Pac-West's definition of "ISP-bound traffic" as used in
5 Paragraph 9 of the SPOP Amendment.
- 6 8. Please provide the section of the Interconnection Agreement that specifies a
7 relative use factor to be used.
- 8 9. Please provide the section of the InterLCA Facility Amendment claimed by
9 Pac-West to allow the exchange of non-local ISP bound traffic as traffic being
10 part of the relative use reduction in rate for the first 20 miles of the SPOP and
11 InterLCA Facility.
- 12 10. Please provide the section of the InterLCA Facility Amendment claimed by
13 Pac-West to allow the exchange of non-local ISP bound traffic to be factored
14 as part of the traffic used to determine the relative use reduction in rate for the
15 first 20 miles of the SPOP and InterLCA Facility.
- 16 11. Please provide the section of the SPOP amendment claimed by Pac-West to
17 allow the reduction in rate for the first 20 miles of the SPOP facility.
- 18 12. Please provide the amount or reduction being claimed by Pac-West and the
19 basis for the amount claimed in the petition including all calculations used to
20 arrive at that total.
- 21 13. Identify every NPA-NXX that Pac-West has in service in Arizona, including
22 any NPA-NXXs for which Pac-West has ported telephone numbers from other
23 telecommunications carriers.
- 24 14. For each NPA-NXX identified in Data Request 1-13, identify the physical
25 location of Pac-West's (or its customer's) ISP Server to which those calls are
26 routed.
- 27 15. For each NPA-NXX identified in Data Request 1-13, where the individual
28 assigned telephone numbers are not assigned to an ISP Server, please identify
29 the physical location of each customer served.

- 1 16. Please provide all correspondence, e-mails, or other written communications
2 between Pac-West and Qwest that relates or refers to the issues in dispute in
3 this petition or in Qwest's counterclaim.
- 4 17. Please provide all non-privileged internal correspondence, e-mails, or other
5 written communications generated by Pac-West or any Pac-West employee or
6 agent that relates or refers to the issues in dispute in this petition or in Qwest's
7 counterclaim.
- 8 18. Please provide a list of all telecommunications services offered to Pac-West
9 customers in the state of Arizona that are offered under contract and that are
10 not contained in the Pac-West price list. Please also provide the terms and
11 conditions and pricing associated with those services.
- 12 19. Please provide copies of any and all settlement agreements Pac-West has
13 entered into with other carriers related to compensation for VNXX traffic or
14 ISP-bound traffic.
- 15 20. How many ISP customers does PacWest serve in the state of Arizona? How
16 many physical connections to the PacWest switch does PacWest sell to ISPs?
- 17 21. Where is the physical location of the PacWest switches that serves ISP
18 customers receiving calls from Qwest Arizona end users who dial the
19 telephone number of the ISP connected to the PacWest switch?
- 20 22. For all the traffic that Qwest sends to Pac-West, please identify the amount of
21 traffic each month since January 2001 that originates and terminates in
22 different local calling areas but that is not rated as toll traffic due to VNXX
23 numbering assignment. Exclude traffic that is sent by Pac-West to an ISP
24 customer whose server is located in the same local calling area as where the
25 call originated.
- 26 23. What type of facility is used to provide service by PacWest to its ISP
customer? How many telephone numbers are provided in association with the
facility for each ISP customer? List the telephone numbers provided
(assigned) on those facilities.
- 24 24. Please identify any network facilities provided by Pac-West to its ISP
25 customers, i.e. switch ports, loops, or other facilities used to provide the
26 service Pac-West offers to ISP customers.

- 1 25. At what physical location, for each ISP, does the traffic delivered by Qwest to
2 Pac-West leave the public switched network and pass through a Pac-West
3 Customer's Network Interface Device (NID)?
- 4 26. Please state whether there is any difference in prices in Pac-West price lists for
5 ISPs to obtain service in the same local calling area as the Pac-West switch
6 versus any other local calling area. If so, please specifically identify the pages
7 and sections of the price list that show the pricing differential.
- 8 27. Please identify the price list or contract provisions under which Pac-West
9 provides VNXX service to its ISP customers.
- 10 28. Please fully describe Pac-West's network including location of switches and
11 arrangements and charges for VNXX service.

12 SUBMITTED this 22nd day of March, 2006.

13 Norman Curtright
14 QWEST CORPORATION
15 4041 N. Central Avenue
16 Phoenix, AZ 85012
17 (602) 630-2187

18 -and-

19 FENNEMORE CRAIG, P.C.

20 By _____
21 Timothy Berg
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23 Patrick J. Black
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26 (602) 916-5421

Attorneys for Qwest Corporation

COPY of the foregoing hand-delivered
this 22nd day of March, 2006 to:

1
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6 Attorneys for Pac-West Telecomm, Inc.

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1776274.1/67817.401

EXHIBIT

B

BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER

Chairman

WILLIAM A. MUNDELL

Commissioner

MARC SPITZER

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IN THE MATTER OF THE FORMAL
COMPLAINT AND REQUEST FOR
DECLARATORY JUDGMENT OF PAC-WEST
TELECOMM AGAINST QWEST
CORPORATION

) DOCKET NO. T-03693A-05-0875
) T-01051A-05-0875
)
) **PAC-WEST TELECOMM'S**
) **RESPONSES AND OBJECTIONS TO**
) **QWEST'S FIRST SET OF DATA**
) **REQUESTS TO QWEST**
) **CORPORATION**
)

Pac-West Telecomm, Inc. ("Pac-West") hereby responds to the First Set of Data Requests sent out by Qwest Corporation ("Qwest") on March 22, 2006.

PRELIMINARY STATEMENT

Pac-West's investigation of this contract action is continuing. Pac-West reserves the right to amend, modify or supplement the information and objections contained in these responses as new information becomes available. Additionally, these responses are without prejudice to Pac-West's right to use or rely on any subsequently discovered information or facts, or information or facts omitted from these responses as a result of mistake, error, oversight or inadvertence.

GENERAL OBJECTIONS

Pac-West incorporates the following General Objections into its Specific Responses and Objections to each and every request for information.

1. Pac-West objects to each request to the extent the request seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Pac-West does not deem the Data Requests to seek such information and will only produce responsive and non-privileged documents, if any.

2. Pac-West objects to each request on the grounds that they are unduly burdensome and oppressive, in violation of Arizona Rules of Civil Procedure 26(b) in that they would, if read literally, require Pac-West to conduct an overly expansive search for documents. Pac-West does not deem the requests to seek the undertaking of such a search.

3. Pac-West objects to each request to the extent it is vague and ambiguous.

4. Pac-West objects to each request to the extent they seek documents that are protected from disclosure by any privacy rights.

5. Pac-West objects to each request to the extent that they seek documents protected by the attorney-client privilege, attorney work product or any other applicable privilege. In the responses set forth below, references to "non-privileged" documents shall refer to documents not protected by any applicable privilege, doctrine or right.

6. Pac-West objects to each request to the extent that the request seeks the production of confidential, nonpublic and/or proprietary business information or trade secrets. Documents containing such information will be produced only pursuant to the stipulated protective order in effect in this case.

7. Pac-West objects to each request on the ground of undue burden to the extent that the request asks Pac-West to produce documents already in Qwest's possession or available to Qwest by a search of public records or other means.

8. Pac-West objects to each request insofar as it seeks a legal opinion or conclusion.

SPECIFIC RESPONSES AND OBJECTIONS

Q1-1 Please state whether any voice traffic is carried over the trunks Pac-West has obtained from Qwest. If Pac-West customers originate voice grade traffic, please state the volume of the traffic on a monthly and annual basis and its percent of all traffic exchanged between Qwest and Pac-West for the years 2000-present. State how much of the traffic is originated by a Pac-Qwest customer and how much is terminated to a Pac-West customer.

RESPONSE TO Q1-1

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to this request on the grounds that it seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections and the Specific Objections to this request, Pac-West responds that it does not – nor is it lawfully authorized to – peer into the content of customer traffic to ascertain what type of traffic is sent or received by a customer.

Q1-2 Please state whether any traffic, other than Internet Service Provider (ISP-bound) traffic, is carried on any trunks Pac-West has obtained from Qwest. Of all the ISP-bound traffic carried on any of the trunks Pac-West has obtained from Qwest, please state the volume of the 2001 – present traffic on a monthly and annual basis which is (a) originated by Pac-West customers destined for Qwest customers, and (b) originated by Qwest customers destined for Pac-West customers.

RESPONSE TO Q1-2

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-2 on the grounds that: (1) it is vague and overbroad in the use of the phrase “ISP-bound”; (2) it seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence; and (3) it seeks information that is available to Qwest through customer data records and in bills and invoices sent and received by Qwest. Subject to and without waiving the General Objections and the Specific Objections to this request, Pac-West responds that it does not – nor is it lawfully authorized to – peer into the content of customer traffic to ascertain what type of traffic is sent or received by a customer.

Q1-3 Does Pac-West provide any competitive local telephone services in Arizona? How many minutes of use of per month of competitive local telephone services does Pac-West originate and to whom?

RESPONSE TO Q1-3

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-3 on the grounds that: (1) it is vague and overbroad; (2) it seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence; and (3) it seeks information that is available to Qwest through customer data records and in bills and invoices sent and received by Qwest. Subject to and without waiving the General Objections and the Specific Objections to this

request, Pac-West responds that it is a competitive local exchange carrier and it provides competitive local telephone services.

Q1-4 Does Pac-West have any customers other than ISP's? Where are Pac-West's ISP customers' modems located?

RESPONSE TO Q1-4

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-4 on the grounds that: (1) it is vague, confusing and overbroad generally, and specifically ambiguous in its use of the phrase "other than ISP's"; and (2) it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections and the Specific Objections to this request, Pac-West responds that it does not examine the content of its customers' traffic.

Q1-5 What percent/ratio of rate reduction does Pac-West claim in this case and how was that figure arrived? Please describe how Pac-West measures the MOU for calls originated by Pac-West customers?

RESPONSE TO Q1-5

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-5 on the grounds that: (1) it is vague, confusing and overbroad generally; and (2) it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections and the Specific Objections to this request, Pac-West responds that the applicability of the relative use factor and corresponding financial

obligation is laid out in the Interconnection Agreement, as amended, and that contract speaks for itself.

Q1-6 Please identify the price list or contract provisions under which Pac-West provides voice service or competitive local telephone services in Arizona.

RESPONSE TO Q1-6

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-6 on the grounds that: (1) it is vague, confusing and overbroad generally; and (2) it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

Q1-7 Please provide Pac-West's definition of "ISP-bound traffic" as used in Paragraph 9 of the SPOP Amendment.

RESPONSE TO Q1-7

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-7 on the grounds that: (1) it is vague, confusing and overbroad generally; and (2) it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections and the Specific Objections to this request, Pac-West asserts that the ICA SPOP amendment speaks for itself.

Q1-8 Please provide the section of the Interconnection Agreement that specifies a relative use factor to be used.

RESPONSE TO Q1-8

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Subject to and without waiving the General Objections, Pac-West asserts that the Interconnection Agreement speaks for itself.

Q1-9 Please provide the section of the InterLCA Facility Amendment claimed by Pac-West to allow the exchange of non-local ISP bound traffic as traffic being part of the relative use reduction in rate for the first 20 miles of the SPOP and InterLCA Facility.

RESPONSE TO Q1-9

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-9 on the grounds that: (1) it is vague, confusing and overbroad generally, and specifically ambiguous in its use of the phrase “non-local ISP bound traffic”; and (2) it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections, Pac-West responds that the Interconnection Agreement explicitly allows for the exchange of, and compensation for, ISP bound traffic. The Interconnection agreement does use the term “non-local traffic ISP bound traffic.”

Q1-10 Please provide the section of the InterLCA Facility Amendment claimed by Pac-West to allow the exchange of non-local ISP bound traffic to be factored as part of the traffic used to determine the relative use reduction in rate for the first 20 miles of the SPOP and InterLCA Facility.

RESPONSE TO Q1-10

See response to Q1-9.

Q1-11 Please provide the section of the SPOP amendment claimed by Pac-West to allow the reduction in rate for the first 20 miles of the SPOP Facility.

RESPONSE TO Q1-11

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-11 on the grounds that: (1) it is vague, confusing and overbroad generally; and (2) it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections, Pac-West does not contend that the relative use factor requirement found in the InterLCA Amendment applies to the SPOP Amendment.

Q1-12 Please provide the amount or reduction being claimed by Pac-West and the basis for the amount claimed in the petition including all calculations used to arrive at that total.

RESPONSE TO Q1-12

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-12 on the grounds that: (1) it is vague, confusing and overbroad generally; and (2) it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections, Pac-West does not contend that the relative use factor requirement found in the InterLCA Amendment applies to facilities intentionally ordered pursuant to the SPOP Amendment.

Q1-13 Identify every NPA-NXX that Pac-West has in service in Arizona, including any NPA-NXXs for which Pac-West has ported telephone numbers from other telecommunications carriers.

RESPONSE TO Q1-13

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-13 on the grounds that it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections Pac-West responds that the information sought in Q1-13 is available to Qwest through the Local Exchange Routing Guide (the "LERG").

Q1-14 For each NPA-NXX identified in Data Request 1-13, identify the physical location of Pac-West's (or its customer's) ISP Server to which those calls are routed.

RESPONSE TO Q1-14

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-14 on the grounds that: (1) it is vague, confusing and overbroad generally, and specifically ambiguous in its use of the phrase "physical location"; and (2) that it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections, Pac-West responds that it does not monitor whether its customers have servers.

Q1-15 For each NPA-NXX identified in Data Request 1-13, where the individual assigned telephone numbers are not assigned to an ISP Server, please identify the physical location of each customer served.

RESPONSE TO Q1-15

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-15 on the grounds that: (1) it is vague, confusing and overbroad generally, and specifically ambiguous in its use of the phrase “physical location”; and on the grounds that it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections, Pac-West responds that it uses the NPA-NXX number to identify the physical location or presence of a customer, which is consistent with industry standard billing systems.

Q1-16 Please provide all correspondence, e-mails, or other written communications between Pac-West and Qwest that relates or refers to the issues in dispute in the petition or in Qwest’s counterclaim.

RESPONSE TO Q1-16

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-16 on the grounds that it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections, Pac-West responds that Qwest has this information.

Q1-17 Please provide all non-privileged internal correspondence, e-mails, or other written communications generated by Pac-West or any Pac-West employee or agent that relates or refers to the issues in dispute in this petition or in Qwest's counterclaim.

RESPONSE TO Q1-17

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-17 on the grounds that it is vague, overbroad and overly burdensome.

Q1-18 Please provide a list of all telecommunications services offered to Pac-West customers in the state of Arizona that are offered under contract and that are not contained in the Pac-West price list. Please also provide the terms and conditions and pricing associated with those services.

RESPONSE TO Q1-18

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-18 on the grounds that it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence and on the grounds that the request is vague, overbroad and overly burdensome.

Q1-19 Please provide copies of any and all settlement agreements Pac-West has entered into with other carriers related to compensation for VNXX traffic or ISP-bound traffic.

RESPONSE TO Q1-19

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-19 on the grounds that it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections, Pac-

West responds that Pac-West has not entered into a settlement agreement related to compensation for VNXX traffic.

Q1-20 How many ISP customers does Pac-West serve in the state of Arizona? How many physical connections to the Pac-Qwest switch does Pac-West sell to ISPs.

RESPONSE TO Q1-20

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-20 on the grounds that: (1) it is vague, confusing and overbroad generally; and (2) it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections, Pac-West does not segregate or monitor customers as "ISP customers" or non ISP customers.

Q1-21 Where is the physical location of the Pac-West switches that serve ISP customers receiving calls from Qwest Arizona end users who dial the telephone number of the ISP connected to the Pac-West switch.

RESPONSE TO Q1-21

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-21 on the grounds that: (1) it is vague, confusing and overbroad generally; and (2) it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections, Pac-West does not segregate or monitor customers as "ISP customers" or non ISP customers. The Pac-West switch is located at 3110 N. Central Ave., Suite 75, Phoenix, AZ 85012.

Q1-22 For all the traffic that Qwest sends to Pac-West please identify the amount of traffic each month since January 2001 that originates and terminates in different local calling areas but that is not rated as toll traffic due to VNXX numbering assignment. Exclude traffic that is sent by Pac-West to an ISP customer whose server is located in the same local calling area as where the call originated.

RESPONSE TO Q1-22

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-22 on the grounds that: (1) it is vague, confusing and overbroad generally; and (2) it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the General Objections, Pac-West responds that it compares the NPA-NXX of the calling and called numbers to rate traffic as 251(b)(5) traffic or 251(g) traffic, which is consistent with industry standard billing systems. Pac-West associates the "physical location" of its customers with the NPA-NXX assigned to it. The NPA-NXX number for each customer is available to Qwest in billing and invoice records. Pac-West recommends that discovery relating to VNXX compensation be held pending resolution of the Pac-West complaint in Docket Nos. T-01051B-05-0495 and T-03693A-05-0495.

Q1-23 What type of facility is used to provide service by Pac-West to its ISP customer? How many telephone numbers are provided in association with the facility for each ISP customer? List the telephone numbers provided (assigned) on those facilities.

RESPONSE TO Q1-23

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-23 on the grounds that: (1) it is vague, confusing and overbroad generally; and (2) it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

Q1-24 Please identify any network facilities provided by Pac-West to its ISP customers, i.e. switch ports, loops, or other facilities used to provide the service Pac-West offers to ISP customers.

RESPONSE TO Q1-24

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-23 on the grounds that: (1) it is vague, confusing and overbroad generally; and (2) it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

Q1-25 At what physical location, for each ISP, does the traffic delivered by Qwest to Pac-West leave the public switched network and pass through a Pac-West Customer's Network Interface Device (NID)?

RESPONSE TO Q1-25

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-23 on the grounds that: (1) it is vague, confusing and overbroad generally; and (2) it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

Q1-26 Please state whether there is any difference in prices in Pac-West price lists for ISP's to obtain service in the same local calling area as the Pac-West switch versus any other local calling area. If so, please specifically identify the pages and sections of the price list that show the pricing differential.

RESPONSE TO Q1-26

Pac-West incorporates by reference the General Objections stated above as though fully set forth herein. Pac-West objects to Q1-23 on the grounds that: (1) it is vague, confusing and overbroad generally; and (2) it seeks information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Pac-West

recommends that discovery relating to VNXX compensation be held pending resolution of the Pac-West complaint in Docket Nos. T-01051B-05-0495 and T-03693A-05-0495.

Q1-27 Please identify the price list or contract provisions under which Pac-West provides VNXX service to its ISP customers.

RESPONSE TO Q1-27

Please see response to Q1-26.

Q1-28 Please fully describe Pac-West's network including location of switches and arrangements and charges for VNXX service.

RESPONSE TO Q1-28

Please see response to Q1-26.

Submitted this 4th day of April, 2006.

OSBORN MALEDON, P.A.

By Joan S. Burke / bw
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Original of the foregoing hand delivered
the 4th day of April, 2006, to:

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EXHIBIT

C

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April 4, 2006

Joan S. Burke
OSBORN MALEDON, P.A.
2929 N. Central Avenue, 21st Floor
P.O. Box 36379
Phoenix, AZ 85067-6379

Re: Pac-West Telecomm v. Qwest Corporation
Docket Nos. T-03693A-05-0875
T-01051A-05-0875
Qwest's First Set of Data Requests to Pac-West

Dear Joan:

Qwest is disappointed that Pac-West chose to serve its many objections, with a paucity of substantive responses, in Pac-West's April 3, 2005, Responses and Objections to Qwest's First Set of Data Requests. Despite Administrative Law Judge Bjelland's procedural order encouraging the parties to attempt to identify and resolve discovery disputes, Pac-West did not attempt to meaningfully discuss its concerns about the Data Requests prior to serving its numerous objections. Pac-West's objections do not allow a fully informed proceeding and opportunity for the parties to fairly litigate this matter, and are unacceptable. Pac-West's objections generally fall within several broad categories. The following is not intended to be a complete catalog of Pac-West's numerous objections, and by listing the following categories of objections Qwest does not intend to convey that it concedes the validity of any or all of Pac-West's objections:

1. Pac-West claims that the requests are vague, ambiguous, and in some instances overbroad. Despite the fact that Qwest consented to Pac-West's request that Pac-West be allowed to state its objections at the same time it served its responses, Pac-West did not avail itself of the extra time to present its concerns about the data requests in an effort to work out a resolution, or even attempt to provide a response. Qwest suggests that if Pac-West finds vagueness or ambiguity (which Qwest denies), the better way to deal with the matter would be through a discussion to more closely define the requests. Likewise, to the extent that Pac-West finds the data requests to be overbroad or burdensome (which Qwest denies), Qwest would be willing to discuss whether the requests could be stated more narrowly and still serve our needs. Accordingly, for each

Data Request you are claiming to be vague, ambiguous, or overbroad, please specify what part or issue you claim to be unable to answer so that we may jointly discuss how to phrase the question in a manner acceptable to both parties.

2. Pac-West claims that the information requested is neither relevant to the subject matter of the action nor reasonably calculated to lead to the discovery of admissible evidence. That objection holds no merit. The type of traffic sent, and the amount of traffic sent, and the relative volumes of traffic exchanged, are facts either directly at issue under the pleadings and the contract, or go to prove those facts. A "general objection" is not sufficient. Accordingly, please answer the Data Requests or state with specificity why Pac West believes it is not relevant.

3. Pac-West objects that the data requests would require it to "peer into the content of customer traffic to ascertain what type of traffic is sent or received . . ." Qwest believes that Pac-West provides certain types of services to its customers, and markets those services for particular applications. In fact, in Docket No. T-01051B-05-0495, Pac-West seeks compensation for what it claims as "ISP-bound" traffic. It strains credulity when Pac-West claims that it cannot identify the types of services it provides and the nature of the usage, without "peering into content." Please provide the requested information. Otherwise, admit that Pac-West is incapable of and does not know what type of traffic it's customers are originating or terminating, and as such, is unable to determine if the traffic is local, interLATA, intraLATA, ISP bound, VNXX or other type of traffic.

4. Pac-West objects to certain data requests on the grounds that the contract documents "speak for themselves." That objection is specious in light the fact that Pac-West's pleadings raise issues of contract interpretation. Please provide answers to the Data Requests or admit and stipulate to Qwest's interpretation of the contract and amendments.

5. In its response to Q1-3, Pac-West objects, among other reasons, on the basis that the request "seeks information that is available to Qwest through customer data records and in bills and invoices sent and received by Qwest." In view of that response, please stipulate to Qwest's records as admissible and correct.

If Pac-West continues in its objections, Qwest is prepared to bring the matter before the Administrative Law Judge to compel production of the information sought by

Joan S. Burke
OSBORN MALEDON, P.A.
April 4, 2006
Page 3

these data requests. I am hopeful that we can avoid having to resort to such measures.
Please respond to this communication on or before April 10.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman G. Curtright". The signature is written in a cursive, flowing style with a large, stylized initial "N".

Norman G. Curtright